

2132, January 13, 1978) implementing Executive Order 11914 (41 FR 17871, April 28, 1976) provided notice that the challenged policy or practice was unlawful.

DEFINITIONS

§ 42.540 Definitions.

As used in this subpart the term:

(a) *The Act* means the Rehabilitation Act of 1973, Public Law 93-112, as amended (29 U.S.C. 701 *et seq.*).

(b) *Section 504* means section 504 of the Act (29 U.S.C. 794).

(c) *Department* means the Department of Justice.

(d) *LEAA* means the Law Enforcement Assistance Administration; *NIJ* means the National Institute of Justice; *BJS* means the Bureau of Justice Statistics; *OJARS* means the Office of Justice Assistance, Research and Statistics; *OJJDP* means Office of Juvenile Justice and Delinquency Prevention.

(e) *Recipient* means any State or unit of local government, any instrumentality of a State or unit of local government, any public or private agency, institution, organization, or other public or private entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) *Federal financial assistance* means any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel;
- (3) Real and personal property or any interest in or use of such property, including:
 - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value

is not returned to the Federal Government;

(4) Any other thing of value by way of grant, loan, contract or cooperative agreement.

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h) (1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

(i) *Ultimate beneficiary* is one among a class of persons who are entitled to benefit from, or otherwise participate in, programs or activities receiving

Department of Justice

§ 42.540

Federal financial assistance and to whom the protections of this subpart extend. The ultimate beneficiary class may be the general public or some narrower group of persons.

(j) *Benefit* includes provision of services, financial aid or disposition (i.e., treatment, handling, decision, sentencing, confinement, or other prescription of conduct).

(k) *Handicapped person*. (1) *Handicapped person* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in this subpart the phrase:

(i) *Physical or mental impairment* means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug and alcohol abuse.

(ii) *Major life activities* mean functions such as caring for one's self, performing manual tasks walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

(l) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (k) of this section.

(n) *Drug abuse* means:

(1) The use of any drug or substance listed by the Department of Justice in 21 CFR 1308.11, under authority of the Controlled Substances Act, 21 U.S.C. 801, as a controlled substance unavailable for prescription because:

(i) The drug or substance has a high potential for abuse,

(ii) The drug or other substance has no currently accepted medical use in treatment in the United States,

(iii) There is a lack of accepted safety for use of the drug or other substance under medical supervision;

(2) The misuse of any drug or substance listed by the Department of Justice in 21 CFR 1308.12 through 1308.15 under authority of the Controlled Substances Act as a controlled substance available for prescription.

Examples of (1) include certain opiates and opiate derivatives (*e.g.*, heroin) and hallucinogenic substances (*e.g.*, marihuana, mescaline, peyote) and depressants (*e.g.*, methaqualone). Examples of (2) include opium, coca leaves, methadone, amphetamines and barbiturates.

(o) *Alcohol abuse* includes alcoholism but also means any misuse of alcohol which demonstrably interferes with a person's health, interpersonal relations or working.

[45 FR 37622, June 3, 1980, as amended by Order No. 2679-2003, 68 FR 51364, Aug. 26, 2003]

APPENDIX A TO SUBPART G OF PART 42—
FEDERAL FINANCIAL ASSISTANCE
ADMINISTERED BY THE DEPARTMENT
OF JUSTICE TO WHICH THIS SUBPART
APPLIES

NOTE: Failure to list a type of Federal assistance in appendix A shall not mean, if section 504 is otherwise applicable, that a program or activity is not covered.

EDITORIAL NOTE: For the text of appendix A to subpart G, see appendix A to subpart C of this part.

[Order No. 1204-87, 52 FR 24450, July 1, 1987]

APPENDIX B TO SUBPART G OF PART 42
[RESERVED]

APPENDIX C TO SUBPART G OF PART 42—
DEPARTMENT REGULATIONS UNDER
TITLE VI OF THE CIVIL RIGHTS ACT
OF 1964 (28 CFR 42.106-42.110) WHICH
APPLY TO THIS SUBPART

EDITORIAL NOTE: For the text of appendix C, see §§ 42.106 through 42.110 of this part.

APPENDIX D TO SUBPART G OF PART 42—
OJARS' REGULATIONS UNDER THE
OMNIBUS CRIME CONTROL AND SAFE
STREETS ACT, AS AMENDED, WHICH
APPLY TO THIS SUBPART (28 CFR
42.205 AND 42.206)

EDITORIAL NOTE: For the text of appendix D, see §§ 42.205 and 42.206 of this part.

Subpart H—Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance

AUTHORITY: E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298; E.O. 12067, 43 FR 28967, 3 CFR, 1978 Comp., p. 206.

SOURCE: Order No. 992-83, 48 FR 3577, Jan. 25, 1983, unless otherwise noted.

§ 42.601 Purpose and application.

The purpose of this regulation is implement procedures for processing and resolving complaints of employment discrimination filed against recipients of Federal financial assistance subject to title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the State and Local Fiscal Assistance Act of 1972, as amended, and provisions similar to title VI and title IX in Federal grant statutes. Enforcement of such provisions in Federal grant statutes is covered by this regulation to the extent they relate to prohibiting employment discrimination on the ground of race, color, national origin, religion or sex in programs receiving Federal financial assistance of the type subject to title VI or title IX. This regulation does not, however, apply to the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, as amended, the Comprehensive Employment Training Act of 1973, as amended, or Executive Order 11246.

§ 42.602 Exchange of information.

EEOC and agencies shall share any information relating to the employment policies and practices of recipients of federal financial assistance that may assist each office in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, annual employment reports, complaints, investigative files, conciliation or compliance agreements, and compliance review reports and files.

§ 42.603 Confidentiality.

When an agency receives information obtained by EEOC, the agency shall observe the confidentiality requirements